the Mecklenburg County Judgment Book 587 at page 267, Book 582 at page 109 and Book 555 at page 319.

A comparison of the dishonest proposed order with Judge Gray's ruling reveals the treacherous ploy. The ruling did not hold that plaintiff had not met his burden under 1C-1705; the ruling never mentioned 1C-1705; the ruling did not mention any findings of fact – the only issues were those of law. That "1C-1705" and "had not met his burden" and "the foregoing findings of fact" language was all fabricated along with their addition to have plaintiff's "action dismissed with prejudice" by the clerk to allow the respondents a window to convey assets to further defraud the plaintiff and sabotage his efforts to ever enforce and collect the judgment.

Fortunately, the petitioner detected some of the subterfuge in time to respond, objecting to any such dishonest, deceitful, proposed order, noting that "creatively adding anything (to the ruling) a day later would be highly improper and terribly unfair to me since it was not part of the ruling...it should stand verbatim as issued by Judge Gray.(emphasis added)"

The defense lawyers then created a second dishonest, deceitful, proposed order, which merely omitted the last sentence from their first proposed order, and then submitted both dishonest, deceitful, proposed orders directly to Judge Gray for his use. On 12 December 2003 Judge Gray signed the second version of the dishonest, deceitful proposed orders. (Appendix, page 1a)

On 31 December 2003 petitioner submitted timely notice of appeal to the N.C. Appeals Court and thereafter timely obtained copies of the transcript of the hearing with copies sent to defendants.

On 17 February 2004 petitioner timely submitted his proposed record on appeal to which defendants submitted their timely objections on 9 March 2004.

On 12 March 2004, pursuant to Rule 11(c) N.C. Rules of Appellate Procedure ("N.C.R.A.P."), petitioner

submitted his request to settle the record on appeal to Judge Gray along with a copy of the proposed record on appeal. Judge Gray did not respond to the request and refused to set a hearing to settle the record on appeal and refused to settle the record on appeal in compliance with Rule 11(c).

On 25 March 2004 petitioner sent Judge Gray, by mail and by telefax, a second letter requesting the hearing be set and record on appeal settled pursuant to Rule 11(c), and further inquired into Judge Gray's health or other reasons for delay. Once again, Judge Gray did not respond to the request and refused to set a hearing to settle the record on appeal and refused to settle the record on appeal in compliance with Rule 11(c).

The following morning, on 26 March 2004, petitioner received a phone call from Judge Gray's Courtroom Clerk, Richard Lockhard, instructing petitioner to phone the Scheduling Clerk, Helen Stonestreet, to have her set a hearing date to settle the record on appeal and to then notice the defendants of the date, and he informed petitioner that Judge Gray was not ill, was retired, and perhaps could not conduct the hearing. Petitioner immediately complied with the instructions, phoned Ms. Stonestreet informing her of the instructions and she set a hearing date for 5 May 2004. Petitioner sent defendants notice of the hearing date and a letter explaining the situation and the call and instructions from Mr. Lockhard. Petitioner also phoned Judge Gray's other Clerk, Ms. Cathy Fletcher, to inquire about Judge Gray's health and capacity. She said that "Although Judge Gray has been retired he still sits and hears cases and was on the bench here last week with a case. He appears well." Petitioner later submitted an affidavit to the North Carolina appeals courts documenting these developments.

On 5 May 2004 petitioner attended the scheduled hearing where he was surprised to find Superior Court Judge Richard D. Boner presiding and who then settled the record on appeal and issued his order re same on 12 May 2004.

On 21 May 2004 petitioner submitted the settled record on appeal to the Appeals Court, in timely fashion pursuant to Rule 12, N.C.R.A.P., and where it was docketed on 24 May 2004.

On 28 May 2004 defendants suddenly moved the N.C. Appeals Court "to dismiss the Plaintiff-Appellant's appeal for failure to timely docket the appeal." Petitioner responded, documenting the facts and noting that any delay was the result of Judge Gray's actions in violation of the Rules and as per the instructions from his Courtroom Clerk whereas the petitioner's actions were in good faith compliance with the Rules, the instructions from the courtroom clerk, the date set by the scheduling clerk, and the actions by the good Judge Boner.

On 9 June 2004 the N.C. Court of Appeals issued an order granting the defendants' motion to dismiss the appeal.

On 19 June 2004 petitioner submitted a notice of appeal to the N.C. Supreme Court of the N.C. Court of Appeals' order, along with a petition for discretionary review of the case on appeal, pursuant to Rule 14(a), N.C.R.A.P.

On 2 December 2004 the N.C. Supreme Court issued its order dismissing the direct appeal and denying the petition for discretionary review. (Appendix, page 3a)

On 10 January 2005 petitioner submitted a petition for writ of certiorari to the N.C. Court of Appeals seeking review of the 12 December 2003 order by Judge Gray.

On 27 January 2005 the N.C. Court of Appeals issued its order denying discretionary review of the petition for certiorari. (Appendix, page 5a)

On 14 February 2005, petitioner submitted a similar petition for writ of certiorari to the N.C. Supreme Court seeking review of the 12 December 2003 order by Judge Gray.

Petitioner's petitions to both the N.C. Appeals Court and to the N.C. Supreme Court included his Memorandum as an exhibit, they documented the highly prejudicial, improper, unjust actions by both Judge Gray and the deceitful defense

lawyers, and they raised the issues, authority, and federal questions now brought for review before this Court. They fully documented the highly prejudicial, improper, unjust actions of Judge Gray (1) at the hearing, (2) his repeated intentional violations of the N.C. Rules of Appellate Procedure, and (3) his further actions using his courtroom clerk to deceive the petitioner. They also documented the defense lawyers' flagrant corruption of Judge Gray's ruling, their deceitful proposed order ploy, and their blatant lying to, and *ex parte* discussions with, the N.C. Superior Court Judges.

On 6 April 2005, the N.C. Supreme Court issued its order denying discretionary review of the petition for certiorari, thereby defeating the petitioner's final appeal to the North Carolina state court of last resort. (Appendix, page 6a)

North Carolina summarily gutted the petitioner's final federal judgment. If allowed to stand, the decisions below have major negative implications for the Full Faith and Credit Clause, the Supremacy Clause, and the judicial power of the United States. Petitioner respectfully prays for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

Defendants claimed the Kentucky federal money judgment is unenforceable as a foreign judgment because it violates North Carolina public policy, N.C.G.S. 1C-1708, because the punitive award exceeds the cap under Chapter 1D-25, and it thusly violates the N.C. Rules of Civil Procedure.

Plaintiff contended the judgment did not violate the N.C. public policy, 1C-1708, 1D-25, and the N.C. Rules of Civil Procedure, and that, regardless, those local policies/rules must still submit to any conflicting Full Faith and Credit authority, and relevant superior case law

authority, which compels the enforcement of the valid Kentucky federal money judgment.

Petitioner's Memorandum contained the superior, controlling authority of this Court and the Full Faith and Credit Clause compelling the enforcement of the federal judgment and it also included other relevant, controlling, supportive authority. Part of that authority in the Memorandum has been extrapolated from the Memorandum and is now quoted hereafter, as follows:

(Quoting from the Memorandum)

> **A. Plaintiff's judgment is enforceable in North Carolina.**
>
> North Carolina will enforce the valid judgment of a sister state pursuant to the full faith and credit clause of Article 4, Section 1 of the U.S. Constitution and consistent with the well settled "Fauntleroy Doctrine."
>
> Numerous cases hold that the full faith and credit doctrine overrides public policies, particularly when the judgment that one seeks to enforce is a money judgment. Exceptions to the full faith and credit doctrine are "few and far between," *M&R Investments Co. v. Hacker*, 511 So.2d 1099, 1100 (Fla. 5th Dist. Ct. App. 1987), citing *Williams v. North Carolina*, 317 U.S. 287 (1942), where the U. S. Supreme Court stated: "Chief Justice Marshall stated in *Hampton v. M'Connel*, 3 Wheat. 234,235, that "the judgment of a state court should have the same credit, validity, and effect, in every other court in the United States, which it had in the state where it was pronounced, and that whatever pleas would be good to a suit thereon in such state, and none others, could be pleaded in any other court in the United States." That view has survived

substantially intact. *Fauntleroy v. Lum*, 210 U.S. 230 (1908) . This Court only recently stated that Article IV, Section 1 and the Act of May 26, 1790 require that "not some but full" faith and credit be given judgments of a state court. *Davis v. Davis*, 305 U.S. 32, 40 (1938). Thus even though the cause of action could not be entertained in the state of the forum either because it had been barred by the local statute of limitations or contravened local policy, the judgment thereon obtained in a sister state is entitled to full faith and credit. See *Christmas v. Russell*, 5 Wall. 290; *Fauntleroy v. Lum*, supra; *Kenney v. Supreme Lodge*, 252 U.S. 411 (1920); *Titus v. Wallick*, 306 U.S. 282,291 (1939). Some exceptions have been engrafted on the rule laid down by Chief Justice Marshall. But as stated by Mr. Justice Brandeis in *Broderick v. Rosner*, 294 U.S. 629, 642 (1935), "the room left for the play of conflicting policies is a narrow one." So far as *judgments* are concerned the decisions, as distinguished from dicta, show that the actual exceptions have been few and far between, apart from Haddock v. Haddock. For this Court has been reluctant to admit exceptions in cases of *judgments* rendered by the courts of a sister state, since the "very purpose" of Art. IV, Section 1 was "to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation." *Milwaukee County v. M.E. White Co.*, supra, 296 U.S. at pages 276, 277 (1935). *Id.* At 293-95 (Court's emphasis; footnotes omitted).

The United States Supreme Court has consistently reaffirmed the Constitutional authority supporting full faith and credit application to foreign judgments, mandating their enforcement in sister states whose laws and policies conflict with those of the state of the judgments rendition. "This Court has consistently recognized that in order to fulfill this constitutional mandate, the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced...Acts, records and judicial proceedings...shall have the same full faith and credit in every court within the United States...as they have by law or usage in the courts of such State...from which they are taken." *Underwriters Assur. Co. v. North Carolina Guaranty Assn.,* 455 U.S. 691 (1982)

More recently, in *Baker v. General Motors Corp.,* 522 U.S. 222 (1998), the United States Supreme Court emphasized that other states' judgments, as opposed to their statutes, are entitled to full faith and credit even when the judgments are contrary to a sister state's local policies or laws:

"Our precedent differentiates the credit owed to laws (legislative measures and common law) and to judgments. "In numerous cases this Court has held that credit must be given to the judgment of another state although the forum would not be required to entertain the suit on which the judgment was founded." *Milwaukee County v. M.E. White, 296 U.S. 268, 277 (1935).* The Full Faith and Credit Clause does not compel "a state to

substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501 (1939); see *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818-819 (1985). Regarding judgments, however, the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land...

A court may be guided by the forum State's "public policy" in determining the law applicable to a controversy. See *Nevada v. Hall*, 440 U.S. 410, 421-424 (1979). But our decisions support no roving "public policy exception" to the full faith and credit due judgments. See *Estin v. Estin*, 334 U.S., at 546 (1948) (Full Faith and Credit Clause "ordered submission...even to hostile policies reflected in the judgment of another state, because the practical operation of the federal system, which the Constitution designed, demanded it."); *Fauntleroy v. Lum*, 210 U.S. 230, 237 (1908) (judgment of Missouri Court [Page 234] entitled to full faith and credit in Mississippi even if Missouri judgment rested on a misapprehension of Mississippi law). In assuming the existence of a ubiquitous "public policy exception" permitting one State to resist recognition of another State's judgment, the District Court in the Bakers' wrongful-death action, see *supra*, at 230, misread our precedent. "The full faith and credit clause is one of the provisions

incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation." *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948). We are "aware of [no] considerations of local policy or law which could rightfully be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to [a money] judgment outside the state of its rendition." *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 438 (1943). (Court's emphasis; footnotes omitted)

In *FMS Management Systems, Inc. v. Thomas*, 65 N.C. App. 561, 309 S.E.2d 697 (1983), aff'd, 310 N.C. 742, 314 S.E.2d 545 (1984), the N.C. Court of Appeals observed that only in "rare" situations could a public policy exception be applied to the doctrine of full faith and credit and, as a general rule, a valid judgment for the payment of money must be recognized and enforced in a Sister state: "In *Fauntleroy v. Lum*, 210 U.S. 230 (1908), a Mississippi court refused to accord full faith and credit to a Missouri judgment based on a cotton futures contract, illegal in Mississippi. The United States Supreme Court held that Mississippi must give full faith and credit to the Missouri judgment even though such judgment violated its own public policy...The "Fauntleroy Doctrine" was followed by our own Supreme Court in *Mottu v. Davis*, 151 N.C. 237, 65 S.E. 969 (1909)...Defendant points to numerous decisions in which we have stated that a judgment of a court in another state may be attacked on grounds of lack of jurisdiction,

fraud in the procurement, or *as being against public policy*, See, e.g., *Howland v. Spitzer*, 231 N.C. 528, 58 S.E.2d 104 (1950); *Courtney v. Courtney*, 40 N.C.App. 291, 253 S.E.2d 2 (1979). (Emphasis added) Although we have so asserted, it is rare that we will disregard a sister state judgment on public policy grounds. The *Fauntleroy* decision, as noted by a recent commentator, "narrows almost to the vanishing point the area of state public policy relief from the mandate of the Full Faith and Credit Clause – at least so far as the judgments of sister states are concerned." Wurfel, Recognition of Foreign Judgments. 50 N.C.L.Rev. 21, 43 (1971).

Consequently, any applications of North Carolina "local policy or law", such as Sections 1C-1701, *et seq.* or 1D-25 of N.C.G.S., or the N.C. Rules of Civil Procedure, which conflict with the enforcement of a valid foreign money judgment to an individual must submit to the superior Constitutional Full Faith and Credit authority and its controlling case law. Thus, Plaintiff's valid Kentucky money judgment must be enforced in North Carolina pursuant to the previously cited Constitutional and case law authority supporting it.

The conclusion that the Kentucky money judgment is entitled to full faith and credit in the present case is consistent with Sections 93, 100, 103, and 117 of the Restatement (Second) of Conflict of Laws (1971)...with *Mottu v. Davis*, 151 N.C. 237, 65 S.E. 969 (1909), and the "Fauntleroy Doctrine."

B. The Kentucky judgment is not contrary to the public policy of North Carolina.

N.C.G.S Section 1C-1701, *et seq.* of North Carolina's Enforcement of Foreign Judgments Act, and 1C-1708, which refers to public policies, must be interpreted in light of the Full Faith and Credit Clause of the Constitution. Generally, when the "public policy" argument has been used to deny enforcement to a foreign judgment, it has been applied to a whole class of claims rather than to a particular result. Prohibited marriages, wagers, lotteries, racing, gambling and liquor sales are often used as examples. To render the foreign judgment unenforceable as contrary to public policy, it must violate some prevalent conception of good morals or fundamental principle of natural justice or involve injustice to the people of the forum state. *Davis v. Davis*, 269 N.C. 120, 152 S.E.2d 306 (1967); *Boudreau v. Baughman Design, Inc.*, 322 N.C. 331, 368 S.E.2d 849 (1988). None of these concerns applies in the instant case where North Carolina allows punitive damages and merely places a cap on the remedy amount. Differences in the availability of remedy from state to state do not impair the enforcement of foreign judgments.

The United States Supreme Court, in *Baker v. General Motors Corp.*, 522 U.S. 222, 232 (1998), held that full faith and credit authority supercedes conflicting public policy of the second state: (Justice Kennedy, with whom Justice O'Connor and Justice Thomas join, concurring in the judgment) "The majority, of course is correct to hold that

when a judgment is presented to the courts of a second State it may not be denied enforcement based upon some disagreement with the laws of the State of rendition. Full faith and credit forbids the second State to question a judgment on these grounds. There can be little doubt of this proposition. We have often recognized the second State's obligation to give effect to another State's judgments even when the law underlying those judgments contravenes the public policy of the second State. (Emphasis added) See, e.g., *Estin v. Estin*, 334 U.S. 541, 544-546 (1948); *Sherrer v. Sherrer*, 334 U.S. 343, 354-355 (1948); *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 438 (1943); *Williams v. North Carolina*, 317 U.S. 287, 294-295 (1942); *Fauntleroy v. Lum*, 210 U.S. 230, 237 (1908)."

N.C.G.S. Section 1C-1708 must be interpreted in the context of full faith and credit law. The statute must be read narrowly so that its reference to public policy relates only to the rare exceptions that may apply to full faith and credit doctrine. In the present case the money judgment awarding $500,000. in punitive damages does not fall within such an exception. Therefore, Section 1C-1708 does not preclude enforcement of the Kentucky judgment in North Carolina, and the judgment is not in violation of North Carolina public policy for purposes of full faith and credit. Penultimately, constitutional authority supporting the enforcement of a valid, foreign judgment must prevail over any state's conflicting public policies or laws, as per the hornbook Fauntleroy Doctrine: "Provided that

the judgment is valid, full faith and credit requires that it be recognized and enforced in a sister State even though the original claim is contrary to the strong public policy of the sister state." *Fauntleroy v. Lum*, 210 U.S. 230 (1908).

C. N.C.G.S. Chapter 1D, and notable Section 1D-25, does not detrimentally effect the enforcement of plaintiff's punitive damages award; Section 1D-25 does not apply retroactively to the punitive damages award and it cannot project its statutory cap across state lines to Kentucky to preclude the affect and consequences of Kentucky's punitive damages statute.

Section 1D was enacted in January 1996 and specifically made non-retroactive to incidents before that date. "This section does not apply to incidents that occurred before it was enacted." *Connelly v. Family Inns of America*, 141 N.C.App. 583, 540 S.E.2d 38 (2000); *Food Lion v. Capital Cities/ABC*, Inc., 984 F.Supp. 923 (M.D.N.C. 1997); *Ward v. Beaton*, 141 N.C.App. 44, 539 S.E.2d 30 (2000), cert. denied, 353 N.C. 398, 547 S.E.2d 431 (2001).

In the 1997 *Food Lion* case, the Federal District Court for the Middle District of North Carolina held that the determinative date (re the retroactive feature) was the date of the claim, which would be the same as the filing date of the complaint: "[i]n passing the statute (1D-25), the General Assembly determined that the statute should not be made retroactive. By making that determination, the legislature indicated that

the prior standards which governed punitive damages should apply to claims arising before January 1, 1996." *Food Lion v. Capital Cities/ABC, Inc., supra.* Plaintiff's claim arose in 1994 when he filed his complaint.

However, in the 1995 *Paris* case and the 2000 *Connelly* case the N.C. Appeals Court held that the 1D retroactive feature is determined by the date of the tortious act supporting the punitive damages award claim, and if that tortious act occurred prior to January 1996 then 1D does not apply by virtue of the non-retroactive feature: "a party's entitlement to punitive damages can only arise in connection with the tortious act." *Paris v. Michael Krietz, Jr.*, 331 S.E.2d 234 (N.C.App.1985) "[A] party's entitlement to punitive damages...can only arise in connection with the tortious act. We note that since Chapter 1D of the North Carolina General Statutes pertaining to punitive damages was not effective until after the incident in this case occurred, it does not apply. N.C. Gen. Stat. Sect. 1D-1, Editors Note (1999)." *Connelly v. Family Inns of America, Inc., supra.* The N.C. Appeals Court ruling was subsequently supported and further clarified in the 2001 *Rhone-Poulanc* case before the Federal Appeals Court: "The North Carolina statute (1D) was only effective as of January 1996...and the North Carolina legislature made no provisions for retroactivity...the fraud complained about in this action occurred in 1994...applying the rationale of fair notice to the case at hand...the changes in the North Carolina law occurred after DeKalb decided to commit its

fraudulent conduct...It could be argued that this language (fair notice policy) suggests that it is the timing of the filing of the complaint, rather than the timing of the fraudulent event, that is actually relevant. However, the filing of the complaint is not the point in time in which the defendant chose whether or not to commit the fraudulent conduct by considering what penalty might result. Rather, this choice and comparison is made at the time at which the fraudulent conduct occurs." *Rhone-Poulanc Agro, S.A. v. DeKalb Genetics*, 272 F.3d 1335, 1351-1352 (Fed.Cir. 2001) The defendants chose to defraud plaintiff in April/May of 1993, when the fraud occurred, as alleged in plaintiff's subsequent complaint filed in April of 1994.

The controlling authority of the *Connelly* and *Rhone-Poulanc* cases make it clear that the date of the tortious, fraudulent act is what determines the application of the 1D retroactivity feature. In the instant case that date is April/May 1993 which nullifies any 1D impact upon plaintiff's punitive damages award.

Application of 1D to limit or deny plaintiff's punitive damages award is inconsistent with controlling authority in the U.S. Supreme Court's *Nevada v. Hall*, 440 U.S. 410 (1979), case concerning the key issue of whether the enforcing state can impose its own damages cap on a foreign judgment which is in excess of the cap, when the issuing state has no cap. In that *Nevada* case, a party tried to have Nevada's statutory cap on damages awards imposed upon a valid California foreign judgment brought to

Nevada to be enforced, notwithstanding that California had no such cap. The U.S. Supreme Court decision upheld the enforcement of the judgment as it had been issued by the California court, holding that Nevada could not project and impose its laws upon California's statutorily based policies. "A California court has entered a judgment against the State of Nevada that Nevada's own courts could not have entered (because the award exceeded the Nevada cap)...California had its own scheme governing compensation...that would be frustrated were it denied enforcement. Full Faith and Credit here does not enable one state (Nevada) to legislate for the other or to project its laws across state lines so as to preclude the other (California) from prescribing for itself the legal consequences of acts within it...To require California either to surrender jurisdiction or to limit respondent's recovery to the $25,000 maximum of the Nevada statute would be obnoxious to its statutorily based policies...the Full Faith and Credit Clause does not require this result." *Nevada v. Hall*, 440 U.S. 410,411,423-424 (1979) Consistent with this authority, North Carolina cannot project its statutory cap on punitive damages awards across state lines to Kentucky to preclude the affect and consequences of Kentucky's punitive damages statute. While there is a distinct difference in the statutory laws between Kentucky and North Carolina concerning a remedial cap on punitive damages, it is the Kentucky statute that must be applied in the instant case, pursuant to the previously cited authority.

The above argument and cited, controlling authority solidly refute the defendants contention that the judgment is unenforceable in North Carolina because the punitive damages award exceeds the limitations imposed on punitive damages under the local laws/policies of N.C.G.S. Section 1C-1701, *et seq.* and Chapter 1D-25.

Ex post facto application of N.C.G.S. Section 1D is unconstitutional... (and forbidden by Art. I Section 9)

D. Plaintiff's pleadings and filings in this action are to be liberally construed; he is entitled to Fourteenth Amendment protections.

"As a *pro se* litigant, Plaintiff (Anderson) was entitled to a liberal construction of his pleadings and filings. *Boswell v. Mayer,* 169 F.3d 384, 387 (1999)." Sixth Circuit ruling in the Kentucky case, *Anderson v. Wade*, et al., unpublished Opinion No. 00-6249, March 29, 2002. (The Sixth Circuit opinion, at page 9, specifically noted the application and relevance of this principle in affirming the federal judgment at issue in the present case)

Also, since the *pro se* Plaintiff is only a farmer he must rely on the Court to know and apply the proper case law authority, even if the Plaintiff had failed to present or argue that authority. Any less responsible action by the Court would deny Plaintiff's Constitutional Rights, under the Fourteenth Amendment, to fundamental fairness, equal

justice and due process under color of North Carolina law.

(Closing the quote from the Memorandum)

E. The North Carolina Courts actions decided important federal questions in a way that conflicts with controlling decisions of this Court and the Constitutional authority of Art. IV Sec. 1, Art. I Sec. 9, Art. III Sec. 2, and Art. VI, which compel enforcement of the judgment.

The previously cited authority of this Court compelled the enforcement of the final federal judgment by North Carolina pursuant to the Fauntleroy Doctrine, consistent with the *Baker v. General Motors* case.

The trial judge's actions effectively subordinated the authority of the controlling decisions of this Court and the U.S. Constitution to the inferior, conflicting authority of North Carolina local laws and policies and decided important federal questions in a way that conflicts with *Baker* and other relevant decisions of this Court and the constitutional authority under Art. IV Sec. 1, Art. I Sec. 9, Art. III Sec. 2 , and Art. VI.

The very same authority was subsequently placed before the North Carolina Court of Appeals and the North Carolina Supreme Court by the petitioner seeking relief. Unfortunately, both courts denied the relief within their discretionary powers.

The Article IV Section 1 Full Faith and Credit Clause requires enforcement of one state's valid judgment in all the sister states of the Union. Article III vests the judicial power of the United States in the federal courts, and Section 2 of that Article states "the judicial Power shall extend to all Cases in Law and Equity...between Citizens of different States." Article VI, the Supremacy Clause, states "this Constitution and the Laws of the United States...shall be the supreme Law of the Land; and the Judges in every State shall

be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Therefore, if Full Faith and Credit demand that one state's judgment must be enforced by all of the sister states, it follows, *a fortiori,* that the Supremacy Clause also demands that a judgment of the United States Courts must be enforced by all of the states in the Union. The North Carolina state courts use of their local laws/policies to nullify a final judgment of the federal courts represents a direct assault on the judicial power of the United States by the North Carolina state courts.

If a final, valid federal court judgment can be rendered worthless by a states' conflicting, arbitrary local laws or policies what power does the Supremacy Clause hold?

F. The North Carolina Superior Court decided important federal questions in a way that conflicts with relevant decisions of this Court and acted in violation of the XIVth Amendment guarantees of equal justice, fundamental fairness and due process in failing to properly consider the *pro se* petitioner's memorandum and its controlling authority compelling enforcement of petitioner's valid federal judgment.

In refusing to review and properly consider petitioner's Memorandum, and its controlling case law authority compelling the enforcement of the judgment, the trial judge flagrantly denied petitioner due process, equal justice, and fundamental fairness in violation of the XIVth Amendment and he egregiously defied, violated and made a mockery of the authority of this Court and the Full Faith and Credit Clause and other relevant constitutional authority compelling enforcement of the valid federal judgment.

At a bare minimum, Judge Gray should have at least fully reviewed the authority in the petitioner's Memorandum before ruling. It is fundamentally unfair and unjust for a court to flat out refuse to even hear and consider specific,

pertinent authority submitted by a party, let alone by a *pro se* litigant. Instead of complying with *Boswell v. Mayer* and granting petitioner's Memorandum a "liberal construction" the trial judge took an opposite approach and refused to afford it any construction whatsoever or even the slightest review and consideration despite petitioner's explicit plea that its vital, controlling authority be reviewed prior to ruling. The trial judge chose to totally ignore and defy both the letter and spirit of *Boswell v. Mayer* and to totally ignore and defy the authority of this Court and the Constitution compelling the enforcement of the federal judgment.

Judge Gray's subsequent actions compounded his flagrant violation of petitioner's XIVth Amendment rights at the hearing. Those actions included his adamant, repeated refusal to do his duty, pursuant to Rule 11 of the North Carolina Rules of Appellate Procedure, and settle the record on appeal despite two distinct, timely, proper requests by petitioner. Those actions also included his further intentional misconduct in using his courtroom clerk to contact and deceive the petitioner with misleading instructions that resulted in the late filing of the record on appeal and the subsequent dismissal of the appeal.

Judge Gray heavy handedly nullified the enforcement of the entire judgment, gutting even the compensatory award which did not violate any N.C. statute, rather than simply amending the punitive award to comply with the N.C. statute thereby demonstrating his total disregard for any sense of fundamental fairness or justice.

The aggregate of Judge Gray's actions evidences his draconian bias and prejudice against the *pro se* petitioner and a reckless disregard, disrespect and defiance of the authority of the Full Faith and Credit Clause, and relevant case law authority of this Court, as well as the XIV Amendment's guarantees of fundamental fairness, due process and equal justice.

The aggregate affect of the North Carolina Courts' actions was to ignore, defy, and refuse to comply with the superior, controlling, U.S. Supreme Court and constitutional authority compelling the enforcement of the judgment and to offend, defy, subordinate and assail the judicial power of the federal courts.

CONCLUSION

The North Carolina Mecklenburg County Superior Court and the North Carolina appeals courts decided the important federal question, of whether plaintiff's Kentucky Federal District Court judgment is enforceable in North Carolina, pursuant to the Full Faith and Credit Clause, in a way that conflicts with the relevant decisions of this Court and the U.S. Constitution.

Respectfully submitted,

PAULL ANDERSON
P.O. Box 16151
Bristol, Virginia 24209
(276) 466-5855
Pro Se

APPENDIX A – ORDER OF THE MECKLENBURG COUNTY SUPERIOR COURT DATED AND FILED DECEMBER 12, 2003

STATE OF NORTH CAROLINA	**IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION**
COUNTY OF MECKLENBURG	**03-CVS-16356**
PAULL ANDERSON,	
Plaintiff,	
v.	**ORDER**
JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC., and WADE AND WADE, ATTORNEYS AT LAW,	
Defendants.	

THIS CAUSE came before the Court at the December 10, 2003 session of Superior Court upon Plaintiff's Motion to Enforce Foreign Judgment filed on September 22, 2003. Plaintiff appeared pro se. Defendants Julius Jennings Wade, Jr., James H. Wade and Wade and Wade were represented by Michael F. Schultze of the firm of Cranford, Schultze & Tomchin. Defendant Margaret L. Godley was represented by William K. Diehl, Jr. and John S. Arrowood of the firm James, McElroy & Diehl, P.A. The Court, having considered the Motion, pleadings, all

documents of record, the submissions of the parties and oral argument finds:

1. Plaintiff has failed to comply with the mandatory requirements of Article 17, G.S. Section 1C-1701, et seq., particularly the provisions of N.C.G.S. Section 1C-1703.

2. Plaintiff has not met his burden under the provisions of N.C.G.S. Section 1C-1705, nor has he complied with the North Carolina Rules of Civil Procedure.

3. The judgment Plaintiff seeks to enforce is contrary to the public policies of the State of North Carolina, particularly the provisions of Chapter 1D of the North Carolina General Statutes.

4. Because the Judgment Plaintiff seeks to enforce is violative of the North Carolina Public Policy, it is unenforceable pursuant to the provisions of N.C.G.S. Section 1C-1708.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes as a matter of law that the above referenced findings, jointly and severally, mandate that Plaintiff's Motion to Enforce Foreign Judgment should be denied.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED THAT Plaintiff's Motion to Enforce Foreign Judgment be and the same hereby is, DENIED.

To the entry of the foregoing findings and conclusions and Order, Plaintiff objects and excepts.

This the 12th day of December, 2003.

s/ Marvin K. Gray
Superior Court Judge Presiding

APPENDIX B – ORDER OF THE NORTH CAROLINA SUPREME COURT DATED 2 DECEMBER 2004, FILED 13 DECEMBER 2004

No. 315PO4
TWENTY-SIXTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
* *

(Anderson v Wade, et al)
PAULL ANDERSON

v

JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC. and WADE AND WADE, ATTORNEYS AT LAW

From NC Court of Appeals
(COA04-715)
From Mecklenburg
(03CVS16356)
* *

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Plaintiff on the 22nd day of June 2004 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Defendants (Wades), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 2nd day of December 2004.

s/ Brady, J.
For the Court"

Upon consideration of the petition filed on the 22nd day of June 2004 by Plaintiff in this matter for discretionary review of the order of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 2nd day of December 2004.

s/ Brady, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 13th day of December 2004.

Christie Speir Cameron
Clerk
Supreme Court of
North Carolina
s/ Shaula A. Brannan
Assistant Clerk

APPENDIX C – ORDER OF THE NORTH CAROLINA COURT OF APPEALS DATED AND FILED JANUARY 27, 2005

No. COAP05-51

NORTH CAROLINA COURT OF APPEALS

* *

PAULL ANDERSON,
Plaintiff,

V

JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC., and WADE AND WADE, ATTORNEYS AT LAW,
Defendants.

* *

ORDER

The following order was entered:

The petition filed in this cause on the 12th day of January 2005 and designated "Petition for Writ of Certiorari" is denied.

By order of the Court this the 27th day of January 2005.

The above order is therefore certified to the Clerk of Superior Court Mecklenburg County.

Witness my hand and official seal this the 27th day of January 2005.

s/ John H. Connell
Clerk of North Carolina
Court of Appeals

APPENDIX D – ORDER OF THE NORTH CAROLINA SUPREME DATED APRIL 6, 2005, FILED 11 APRIL 2005

No. 315PO42 TWENTY-SIXTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

* *

(Anderson v Wade, et al)

PAULL ANDERSON

v

JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC. and WADE AND WADE, ATTORNEYS AT LAW

From NC Court of Appeals
(COA04-715)
(COAP05-51)
From Mecklenburg
(03CVS16356)

* *

ORDER

Upon consideration of the petition filed by Plaintiff on the 16th day of February 2005 in this matter for a writ of certiorari to review the order of the Superior Court, Mecklenburg County, the following order was entered and is hereby certified to the Superior Court of that County:

"Dismissed by order of the Court in conference, this the 6th day of April 2005.

s/ Newby, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 11th day of April 2005.

Christie Speir Cameron
Clerk
Supreme Court of
North Carolina
s/ Shaula A. Brannan
Assistant Clerk

Supreme Court, U.S.
JUL 2005
OFFICE OF THE CLERK

(2)

No. 04-1732

IN THE

Supreme Court of the United States

PAULL ANDERSON,

Petitioner,

v.

JULIUS JENNINGS WADE, JR., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR NORTH CAROLINA

BRIEF IN OPPOSITION FOR RESPONDENT MARGARET L. GODLEY

WILLIAM K. DIEHL, JR.
Counsel of Record
JOHN S. ARROWOOD
JAMES, MCELROY & DIEHL, P.A.
600 South College Street
Suite 3000
Charlotte, NC 28202
(704) 372-9870

Attorneys for Respondent Margaret L. Godley

195601

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Did the North Carolina Supreme Court properly refuse certiorari to review the order of the decisions of the Mecklenburg County Superior Court and the North Carolina Court of Appeals?

INTRODUCTION

Petitioner, Paull Anderson, seeks to have the Honorable Supreme Court of the United States grant discretionary review of the Supreme Court of North Carolina's refusal to hear his appeal which was dismissed for failure to comply with the North Carolina Rules of Appellate Procedure. This Court does not have jurisdiction over this action. Even if jurisdiction would lie, this case does not raise compelling reasons for the grant of certiorari as required by Rule 10 of the Rules of the Supreme Court of the United States. As such, this Honorable Court should deny the Petition.

STATEMENT OF THE CASE

This action constituted Petitioner's third attempt to have the North Carolina Courts enforce a foreign judgment. Petitioner previously filed actions bearing Mecklenburg County case number 00-CVS-18921, on December 6, 2000, and 03-CVS-5490 on March 27, 2003 seeking to enforce the same judgment. The North Carolina Superior Court denied Petitioner's request to enforce the judgment in those cases, and Petitioner appealed to the North Carolina Court of Appeals. On September 22, 2003, Petitioner voluntarily withdrew his appeals from the orders in those cases.

On October 23, 2003, Petitioner instituted the instant action seeking to enforce the same judgment. On December 10, 2003 the Mecklenburg County Superior Court heard Petitioner's motion, denied the same and directed counsel to draft a proposed order. On December 12, 2003, the Court entered its order. On December 31, 2003 Petitioner gave notice of appeal to the North Carolina Court of Appeals. Petitioner failed to obtain any extensions of time to file his record on appeal with the North Carolina Court of Appeals. The record was filed and docketed in the Court of Appeals on May 24, 2004.

On June 1, 2004, Respondent Godley filed a Motion to Dismiss Appeal because of Petitioner's failure to timely docket

the appeal. On June 4, 2004, Petitioner responded in opposition to the Motion to Dismiss Appeal. On June 11, 2004 the North Carolina Court of Appeals issued an Order dismissing the appeal.

On June 19, 2004, Petitioner appealed to the Supreme Court of North Carolina and filed a Petition for discretionary review seeking review of the North Carolina Court of Appeals' Order dismissing his appeal for failing to comply with the Rules. On December 2, 2004, the Supreme Court of North Carolina dismissed Petitioner's appeal and denied his Petition for discretionary review. Petitioner has included that Order as Appendix B to the Petition. On January 10, 2005, Petitioner filed a Petition for Writ of Certiorari seeking review by the Supreme Court of North Carolina of the Mecklenburg County judgment. On April 6, 2005, the Supreme Court of North Carolina dismissed this Petition.

REASONS FOR DENYING THE PETITION

Anderson, having lost his right to automatic review for failure to comply with the provisions of the North Carolina Rules of Appellate Procedure, now seeks to have this Court overrule the North Carolina Appellate Courts' application of their rules in order to grant substantive review of his appeal. This Court lacks jurisdiction to do so.

In his Petition, Anderson seeks to argue the merits of why the Mecklenburg County Superior Court committed error in its ruling. He does not, however, address the jurisdictional procedural hurdles which prevent him from pursuing this Petition.

This Honorable Court's jurisdiction to review State Court judgments by certiorari is governed by the provisions of 28 U.S.C. § 1257 which in pertinent part states:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the

> validity of a statute of any State is drawn in question on the ground of it being repugnant to the Constitution, treaties, or laws of the United States or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of any commission of, or any commission held or authority exercised under, the United States.

In this case, the decisions of the North Carolina Court of Appeals and the Supreme Court of North Carolina do not impact any of these questions.

The Supreme Court of North Carolina has adopted Rules of Appellate Procedure to govern all appeals from the courts of the trial division to the courts of the appellate division. Those Rules are mandatory and an appeal is subject to dismissal if they are violated. *State v. Fennell*, 307 N.C. 258, 297 S.E.2d 393 (1982). For appeals from any final judgment of a superior court, other than one in which a defendant is convicted of murder in the first degree and sentenced to death, including all appeals in civil actions, an appeal right lies directly to the North Carolina Court of Appeals. N.C.G.S. § 7A-27. All other appellate review is by discretionary writ. Petitioner appealed to the North Carolina Court of Appeals but lost his right to direct appeal by failing to follow the mandatory Rules of Appellate Procedure. Petitioner then sought review of the order dismissing his appeal, by filing an appeal and a petition for discretionary review to the Supreme Court of North Carolina, both of which were denied.

Petitioner, having lost his right to direct appeal for failure to follow the Rules, then filed a Petition for Writ of Certiorari seeking a discretionary review by the Supreme Court of North Carolina. That court declined to take this case.

Under the standards set forth in *Hammerstein v. Superior Court of California*, 341 U.S. 491, 71 S. Ct. 820, 95 L. Ed. 1135 (1951), this Court lacks jurisdiction to accept this Petition. In *Hammerstein* the California Supreme Court refused to grant

a writ of certiorari from a default judgment entered by the superior court. The basis for the California court's ruling was apparently that the petitioner had failed to utilize the proper channels for review. Given those facts, this Court held that it had no jurisdiction to review the proceedings arising from the default judgment. Similarly, in this case the Supreme Court of North Carolina denied certiorari to review the opinion of the superior court where Petitioner's right of automatic appeal had been lost by failure to timely file the record on appeal. Thus, under the tenets of *Hammerstein*, this Court has no jurisdiction to review that decision.

CONCLUSION

Petitioner, having lost his right to direct appeal in the North Carolina Court of Appeals for failure to comply with the mandatory Rules of North Carolina Appellate Procedure and the Supreme Court of North Carolina having denied his petitions for review, Respondent respectfully suggests that this Court is without jurisdiction under 28 U.S.C. §1257 to review the orders of the Mecklenburg County Superior Court. As such this Petition should be denied. In the alternative, Respondent suggests that even if jurisdiction is proper, the Petition for Writ of Certiorari does not provide any compelling reason for this Court to review this proceeding.

Respectfully submitted,

WILLIAM K. DIEHL, JR.
Counsel of Record
JOHN S. ARROWOOD
JAMES, MCELROY & DIEHL, P.A.
600 South College Street
Suite 3000
Charlotte, NC 28202
(704) 372-9870

Attorneys for Respondent
Margaret L. Godley